ARJAY OIL CO.

IBLA 94-241 Decided January 28, 1997

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, finding oil and gas lease to have terminated by reason of cessation of production. W-73156.

Affirmed.

1. Notice: Generally--Oil and Gas Leases: Production--Oil and Gas Leases: Suspensions

   An oil and gas lease in its extended term by reason of production will not expire because production is suspended with the consent of the Secretary. A lease operator will be considered to have notice of the termination of a suspension of production where written notice was sent to the operator's address of record with BLM as evidenced by a certified mail return receipt card regardless of whether it was actually received by the operator.

2. Oil and Gas Leases: Production--Oil and Gas Leases: Termination

   An oil and gas lease in its extended term by reason of production on which there is a well capable of production in paying quantities is properly held to have terminated for cessation of production where the operator fails to either resume production or commence diligent reworking or drilling operations within 60 days of notice to do so.

APPEARANCES: R.J. Hollberg, Jr., President, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

On January 3, 1994, the Arjay Oil Company (Arjay) filed a notice of appeal of an order dated November 24, 1993, issued by the Worland, Wyoming, District Office, Bureau of Land Management (BLM), affecting Federal oil and gas lease W-73156. The order directed Arjay to submit, within 30 days, a

notice of intent to abandon well No. 1-12 situated on land subject to the lease and to plug the well, 1/ noting that the lease had expired on August 1, 1993. Appellant asserts on appeal that it was not previously notified of the expiration of the lease, and challenges that status.

Competitive lease W-73156 was originally issued, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1994), on January 1, 1981, for a term of 5 years, and so long thereafter as oil or gas is produced in paying quantities. 2/ The lease was issued to the Florida Exploration Company. Record title interest in the lease was assigned to J.D. Tinsley by assignment approved by BLM effective December 1, 1985. Arjay became the holder of a 50-percent interest in the operating rights to 120 of the 160 acres subject to the lease for oil and gas found at a depth greater than 1,274 feet below the surface, by virtue of an assignment approved by BLM effective July 1, 1984. 3/

It appears from the record that several wells were drilled on the lease including well No. 1-12 on the NE¼ SE¼ of sec. 12, for which the application for a permit to drill was initially approved on October 19, 1981. That well was completed as a discovery well on February 26, 1982. Arjay subsequently obtained permission from BLM to suspend production from the lease effective September 1, 1986, by shutting-in well No. 1-12, which was the last of the producing wells. See Letter to Arjay from BLM, dated Aug. 29, 1986. The suspension was approved in accordance with the Department's policy to permit the suspension of production from leases having economically marginal or stripper wells, i.e., wells where production was no longer economically justifiable in view of the sharp drop in oil prices at the time. See Instruction Memorandum (IM) No. 86-409, dated Apr. 22, 1986; IM No. 86-508, dated June 6, 1986; Prima Exploration, Inc., 102 IBLA 352, 353, 355 (1988). This suspension, while in effect, had the result of preventing the lease from terminating for failure to produce oil or gas in paying quantities. 30 U.S.C. § 226(i) (1994); 43 CFR 3107.2-3.

By letter dated March 3, 1993, BLM notified Arjay that the Secretary had decided to terminate the Department's marginal/stripper well lease suspensions, effective May 31, 1993. Noting that the lease was in its extended term, and could only be held by production, BLM advised Arjay that, either the lease must be returned to the production of oil or gas in paying quantities or reworking or drilling operations must be commenced before July 31, 1993, and diligently pursued in an effort to reestablish

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1/ The BLM decision stated that the well was to be plugged before Apr. 1, 1993. As this date had already passed, it would appear the intended date was Apr. 1, 1994.

2/ The lease covers 160 acres described as the SE¼ SW¼ sec. 1 and the NE¼ NW¼, NW¼ NE¼, and NE¼ SE¼ sec. 12, T. 51 N., R. 93 W., sixth principal meridian, Big Horn County, Wyoming.

3/ Arjay's operating rights concern all but the NE¼ SE¼ of sec. 12.

such production. BLM stated that, in the absence of such activity, the lease would terminate by operation of law.

By decision dated November 19, 1993, issued to Tinsley, the lessee of record, BLM held that the lease had terminated effective August 1, 1993, because of the "cessation of production." Tinsley was served with the decision, but no copy was sent to Arjay. 4/ On appeal, Arjay states that it first received notice that BLM considered the lease to have terminated when it received the November 24, 1993, decision. See Letter to BLM, dated Dec. 30, 1993. Arjay appealed from the BLM decision finding the lease terminated. 5/

In its notice of appeal, Arjay argues that BLM improperly held the lease to have terminated. Arjay asserts it did not receive notification of the termination of the Department's marginal/stripper well suspension of production effective May 31, 1993, or the need to commence either production or reworking or drilling operations. 6/

[1] It appears from the record that the lease at issue, which would have otherwise expired at the end of its term on December 31, 1985, was extended by reason of production. During that extended term, a suspension of production was authorized by BLM. No oil and gas lease shall expire because production is suspended with the consent of the Secretary. 30 U.S.C. § 226(i) (1994); see 43 CFR 3103.4-2(b). However, the suspension of production on the oil and gas lease in this case was terminated effective May 31, 1993.

4/ A copy of the decision was mailed to Tinsley (certified mail, return receipt requested) at his last address of record with BLM. The envelope containing the decision was returned to BLM. It bore a notation indicating that it could not be forwarded due to expiration of the forwarding order. Nevertheless, Tinsley is deemed to have received the decision. See 43 CFR 1810.2(b); Reg Whitson, 55 IBLA 5, 6 (1981). The date of receipt was Nov. 26, 1993, i.e., when the decision was returned to BLM. See Reg Whitson, supra at 6.

5/ Any adversely affected party contesting an order issued under the operating regulations (43 CFR Part 3160) may request State Director review of the order prior to any appeal to this Board. 43 CFR 3165.3(b). The appeal in this case was forwarded without State Director review. This appears to be appropriate because the appeal was from the decision finding the lease to have terminated rather than the order to plug and abandon the well.

6/ Arjay also asserts that BLM "accepted" its rental payment dated Nov. 23, 1993 (Letter to BLM, dated Dec. 28, 1993). It must be noted that the negotiation of a rental check for accounting control purposes would not signify that BLM did not regard the lease as terminated. See, e.g., Paul D. Lieb, 116 IBLA 279, 284 (1990). A rental payment tendered in connection with a terminated lease would ordinarily be subject to refund in due course. See id.

We are unable to accept Arjay's assertion that it was not notified of the termination of the Department's marginal/stripper well suspension effective May 31, 1993, and the need thereafter to commence production or reworking or drilling operations. While Arjay asserts that it never received the March 1993 BLM letter, the record contains a return receipt card establishing that it was received at Arjay's last address of record with BLM on March 5, 1993. This was sufficient to constitute constructive receipt of the letter by Arjay, regardless of whether it was actually received. See 43 CFR 1810.2(b); Victor M. Onet, Jr., 81 IBLA 144, 146 n.2 (1984); Lloyd M. Baldwin, 75 IBLA 251, 253 (1983).

[2] The notice of termination of the suspension of production also provided notice of the necessity to restore the lease well to production or to commence "diligent workover or drilling operations * * * to restore production in paying quantities" within 60 days of the end of the suspension (i.e., by July 31, 1993) to avoid termination of the lease by operation of law. No lease on which there is a well capable of production in paying quantities shall expire for cessation of production unless the lessee is allowed 60 days after notice to place such well in production. 30 U.S.C. § 226(i) (1994); 43 CFR 3107.2-2. Further, no lease shall terminate by reason of cessation of production if reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes. 30 U.S.C. § 226(i) (1994); 43 CFR 3107.2-2.

Having been given 60-days notice that it was required to commence either production or reworking or drilling operations by July 31, 1993, there is no evidence that Arjay did so. When an oil and gas lease is in its extended term by reason of production, section 17(i) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(i) (1994), and 43 CFR 3107.2-2 and 3107.2-3, require (absent a suspension) either that the lease (containing a well capable of production in paying quantities) be placed into production within 60 days after receipt of notice to do so or that reworking or drilling operations be commenced within 60 days after receipt of notice to do so and thereafter be diligently pursued. See Great Plains Petroleum, Inc., 117 IBLA 130, 132 (1990); Michael P. Grace, 50 IBLA 150, 151-52 (1980). In the absence of such activity, the lease is properly deemed to have terminated by operation of law. Id. That is what occurred here.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge